

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

RAYMOND ORTIZ, # R11842,)	
)	
Plaintiff,)	
vs.)	Case No. 23-cv-02769-SMY
)	
STATE OF ILLINOIS,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

YANDLE, District Judge:

This matter is before the Court for case management. Plaintiff Raymond Ortiz, an inmate of the Illinois Department of Corrections (“IDOC”) currently incarcerated at Big Muddy River Correctional Center, filed the instant action styled as a “Petition of Mandamus” (with a case caption for the Circuit Court of Jefferson County, Illinois) in this Court on August 11, 2023 (Doc. 1). On August 14, 2023, the Court ordered Plaintiff to notify the Court no later than September 5, 2023 whether he intended to proceed with this action in the Southern District of Illinois (Case No. 23-cv-2769-SMY), or whether he would instead re-file this action in the Jefferson County, Illinois court (Doc. 6). That Order also directed Plaintiff to submit a properly signed Petition if he wished to proceed with this case. He was warned that failure to comply with the Court’s Order would result in the striking of his Petition and the dismissal of this action.

The September 5, 2023 deadline has come and gone, and Plaintiff has not responded in any way. Accordingly, the Petition (Doc. 1) is **STRICKEN** from the docket and this case is **DISMISSED with prejudice** for failure to prosecute. FED. R. CIV. P. 41(b); *see James v. McDonald’s Corp.*, 417 F.3d 672, 681 (7th Cir. 2005); *Lucien v. Breweur*, 9 F.3d 26, 29 (7th Cir. 1993) (dismissal for failure to prosecute is presumptively with prejudice). All pending motions

are **DENIED AS MOOT**. The Clerk is **DIRECTED** to **CLOSE THIS CASE** and enter judgment accordingly.

Plaintiff's obligation to pay the filing fee for this action was incurred at the time he filed the action, thus the \$402.00 filing fee remains due and payable.¹ *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). To that end, the agency having custody of the Plaintiff is **DIRECTED** to remit the \$402.00 filing fee from his prison trust fund account if such funds are available. If he does not have \$402.00 in his account, the agency must send an initial payment of 20% of the current balance or the average balance during the past six months, whichever amount is higher. Thereafter, Plaintiff shall make monthly payments of 20% of the preceding month's income credited to Plaintiff's prison trust fund account until the \$400.00 filing fee is paid in full. The agency having custody of Plaintiff shall forward these payments from the Plaintiff's trust fund account to the Clerk of this Court each time the Plaintiff's account exceeds \$10.00, until the \$402.00 fee is paid. Payments shall be mailed to: Clerk of the Court, United States District Court for the Southern District of Illinois, 750 Missouri Ave., East St. Louis, Illinois 62202. The Clerk is **DIRECTED** to mail a copy of this order to the Trust Fund Officer at the Big Muddy River Correctional Center upon entry of this Order.

If Plaintiff wishes to appeal this dismissal, his notice of appeal must be filed with this Court within thirty days of the entry of judgment. FED. R. APP. P. 4(a)(1)(A). A proper and timely motion filed pursuant to Federal Rule of Civil Procedure 59(e) may toll the 30-day appeal deadline. FED. R. APP. P. 4(a)(4). A Rule 59(e) motion must be filed no more than twenty-eight (28) days after the entry of the judgment, and this 28-day deadline cannot be extended.

¹ Had Plaintiff submitted a signed Motion for Leave to Proceed *in Forma Pauperis* ("IFP") and qualified to pay the fee in installments, his filing fee would have been \$350.00. A litigant who is granted IFP status is not assessed the \$52.00 administrative fee for filing an action in a district court. *See* Judicial Conference Schedule of Fees - District Court Miscellaneous Fee Schedule, 28 U.S.C. § 1914, No. 14.

A motion for leave to appeal *in forma pauperis* must set forth the issues Plaintiff plans to present on appeal. *See* FED. R. APP. P. 24(a)(1)(C). If Plaintiff does choose to appeal, he will be liable for the \$505.00 appellate filing fee irrespective of the outcome of the appeal. *See* FED. R. APP. P. 3(e); 28 U.S.C. § 1915(e)(2); *Ammons v. Gerlinger*, 547 F.3d 724, 725-26 (7th Cir. 2008); *Sloan v. Lesza*, 181 F.3d 857, 858-59 (7th Cir. 1999); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

IT IS SO ORDERED.

DATED: September 26, 2023

s/ Staci M. Yandle
STACI M. YANDLE
United States District Judge